

Rebecca Klein
Chairman

Brett A. Perlman
Commissioner

Julie Parsley
Commissioner

W. Lane Lanford
Executive Director



Public Utility Commission of Texas

July 10, 2003

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

RE: *In re Review of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements WC Docket No. 02-112*

Dear Ms. Dortch:

The Public Utility Commission of Texas ("Texas PUC") submits this letter to respectfully request that the Federal Communications Commission reconsider its decision to sunset SBC's section 272 obligations, other than section 272(e). Alternatively, the Texas PUC requests that the FCC reconsider its decision to allow these obligations to sunset through use of a public notice, rather than by Commission order.

The reasons the Texas PUC requests reconsideration of the section 272 sunset have been set out in our previous filings in this docket. So as to not belabor these points, we will not discuss the substance of those comments again, but we do point out that clarifications to the comments filed on May 22, 2003, are attached to this letter as Appendix A.

Even if the FCC determines that it will not reconsider the substance of its actions, the Texas PUC strongly urges the FCC to set out in a Commission order the FCC's analysis behind this action. This request is not undertaken lightly, nor is it made without serious need for such an order. As the regulatory agency charged with ensuring that local telephone competition remains as vibrant as possible, the Texas PUC must have a firm understanding of what actions and conduct the FCC believes is in furtherance of, and in compliance with, the Federal Telecommunications Act of 1996.

Without knowing what actions SBC took to achieve release from the majority of its section 272 obligations, or what representations the FCC relied on in allowing sunset, the Texas PUC cannot possibly hope to hold SBC to those standards. This is particularly true in light of the concerns the Texas PUC shared with the FCC in the comments it filed in this docket. Not only is this guidance necessary so that Texas can ensure that the necessary standards are maintained, but it would also benefit other state commissions that will be undergoing section 272 sunset proceedings in the future.

In sum, the Texas PUC must know what conduct the FCC believes constitutes substantial compliance with federal law so that, in turn, we can uphold our duties. Without this understanding, the Texas PUC has the understandable concern that our two commissions may inadvertently be working in dissonance, rather than in harmony.

The Texas PUC appreciates the opportunity to make this request, and to provide the clarifications contained in Appendix A.

Respectfully submitted,

Public Utility Commission of Texas
1701 North Congress Ave.
P.O. Box 13326
Austin, Texas 78711-3326

/original signed/
Rebecca Klein, Chairman

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Brett A. Perlman, Commissioner

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Julie Parsley, Commissioner

ATTACHMENT A

Rebecca Klein
Chairman

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RE: *In the Matter of Review of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112

Dear Ms. Dortch:

The Public Utility Commission of Texas ("Texas PUC") files this letter to clarify some of the information provided in its comments filed at the Federal Communications Commission (FCC) on May 22, 2003. The letter was filed in response to AT&T's Petition to Extend the Section 272 Obligations of Southwestern Bell Telephone (SWBT) in Texas for three years.

The Texas PUC recognizes that the separate affiliate requirements of SBC's operations in Texas sunset on June 30, 2003 by operation of law.¹ However, the Texas PUC wishes to clarify a few of its comments that were made in response to the AT&T petition. Specifically, on page 2, the Texas PUC discussed the Memorandum of Understanding that was signed by SBC Texas and the Texas PUC on April 29, 1999 that required SBC Texas to reach a goal of 90% for two out of three consecutive months. The Texas PUC clarifies that the 90% goal applies to Tier 2 performance measures only.²

Additionally, the Texas PUC provided information on the amount of months that SBC Texas's performance was above the 90% goal. These numbers were based on the SBC Texas's performance on all measures. After reviewing the data for Tier 2 performance

¹ Section 272 Sunsets for SBC in the State of Texas by Operation of Law on June 30, 2003 Pursuant to Section 272(f)(1), WC Docket No. 02-112. FCC 03-155. FCC Public Notice, released July 1, 2003.

² Tier-2 measures are both "competition and customer affecting," and therefore are subject to assessments payable to the Texas State Treasury in the event the performance delivered to CLECs is non-compliant for any two out of three consecutive months. The goal of Tier-2 is to incent parity performance and disincent anti-competitive behavior; that is, to make the cost of non-compliance more than the "cost of doing business."



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measures only, this information should be modified to read, "From November 1999 to June 2002, SBC Texas's performance was above the 90% goal only 13 out of 32 months."

Finally, the Texas PUC provided information on the percentage of highs and lows for SBC Texas's performance. Based on a review of Tier 2 measures only, the revised sentence should be, "A further review of Tier 2 data indicates that SBC Texas's performance has generally been in the 88%-92% range with a high of 92.6% in September 2001 and a low of 83% in February 2000."

The Texas PUC appreciates the opportunity to provide clarifying comments to its previous comments in this proceeding.

Respectfully submitted,

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